Chemsource (M) Sdn Bhd v Udanis bin Mohammad Nor

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S5-22-659 OF 1998
ABDUL MALIK ISHAK J
30 MAY 2002

Civil Procedure *— Summary judgment — Appeal — Various agreements entered between plaintiff and defendant who suffers from Parkinsons's disease — Whether plaintiff took advantage of defendant's disease and induced him to execute various agreements and land charges — Whether court can make a declaration to ascertain defendant was insane at time of contracting by way of O 14 application — Rules of the High Court 1980 O 14*

The defendant was suffering from Parkinson's disease from 1986 and it caused physical as well as mental disabilities as a result of that disease. The plaintiff was said to be fully aware of the defendant's condition at all material times. It was the defendant's stand that the plaintiff took advantage of the defendant's disease and had induced the defendant to execute various agreements, and land charges for the benefit of the plaintiff but to the detriment of the defendant. The defendant further averred that the plaintiff induced the defendant to execute a third party charge over three other properties belonging to the defendant. That third party charge over the three other properties were executed in favour of the plaintiff for the sole purpose of enabling the plaintiff to obtain banking facilities. In the counterclaim, the defendant sought for a declaration that the said agreement entered between the plaintiff and the defendant be declared null and void and of no effect. The defendant too sought for an order that the plaintiff should within three months from the date of the order of this court, be ordered to release the three other properties in favour of the defendant. On these facts, the plaintiff filed an O 14 application against the defendant. The senior assistant registrar ('SAR') heard the application and dismissed it with costs. Aggrieved by the decision of the SAR, the plaintiff filed a notice of appeal to the judge in chambers.

Held:

(1) On the facts, the question as to whether the defendant was indeed insane at the time of contracting — it can only be ascertained and determined by way of a trial and not by way of an O 14 application. This court cannot make that kind of declaration by way of an O 14 application. There must be an open court hearing (see pp 283I–284A, C).

(2) The usefulness of an O 14 application can never be doubted. It is a vehicle to dispose of cases, which are virtually uncontested. But the plaintiff can only resort to this procedure when the defendant 'has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed' (see p 289G–H).

[Bahasa Malaysia summary

Defendan telah menghidapi penyakit Parkinson's sejak tahun 1986 dan ia menyebabkan kecacatan fizikal dan mental. Plaintif dikatakan sedar sepenuhnya tentang keadaan defendan pada semua masa material. Ia merupakan pendirian defendan bahawa plaintif mengambil kesempatan ke atas penyakit defendan dan telah mendorong defendan supaya melaksanakan pelbagai perjanjian, dan cagaran tanah untuk manfaat plaintif tetapi memudaratkan defendan. Defendan seterusnya mengatakan bahawa plaintif mendorong defendan supaya melaksanakan suatu cagaran pihak ketiga ke atas tiga hartanah kepunyaan defendan. Cagaran pihak ketiga ke atas ketiga-tiga hartanah yang lain tersebut telah dilaksanakan memihak kepada plaintif untuk satu tujuan, iaitu membolehkan plaintif memperolehi kemudahan perbankan. Dalam tuntutan balas, defendan memohon supaya perjanjian tersebut yang diikat di antara plaintif dan defendan diisytiharkan tak sah dan terbatal serta tidak berkesan. Defendan juga meminta satu perintah agar tiga bulan dari tarikh perintah mahkamah ini, plaintif diperintah membebaskan tiga hartanah yang lain tersebut memihak kepada defendan. Atas fakta-fakta ini, plaintif telah memfailkan permohonan A 14 terhadap defendan. Penolong kanan pendaftar ('PKP') telah mendengar permohonan tersebut dan menolaknya dengan kos. Plaintif, yang terkilan oleh keputusan PKP, telah memfailkan satu notis rayuan kepada hakim dalam kamar.

Diputuskan:

(1) Berdasarkan fakta-fakta, persoalan mengenai sama ada defendan sememangnya tidak waras pada masa kontrak diikat, ia hanya boleh ditentukan dan diputuskan melalui perbicaraan dan bukannya melalui satu permohonan A 14. Mahkamah tidak boleh membuat perisytiharan begitu melalui permohonan A 14. Pembicaraan mahkamah terbuka mesti dilangsungkan (lihat ms 283I–284A, C).

(2) Kegunaan suatu permohonan A 14 tidak boleh diragui. Ia merupakan satu alat untuk menyelesaikan kes-kes yang pada lazimnya tidak dicabar. Tetapi plaintif hanya boleh menggunakan prosedur ini apabila defendan 'tidak mempunyai pembelaan kepada satu tuntutan yang termasuk dalam writ, atau kepada bahagian tertentu tuntutan sedemikian, atau tidak mempunyai pembelaan kepada tuntutan sedemikian atau sebahagiannya kecuali mengenai amaun ganti rugi yang dituntut' (lihat ms 289G–H).]

Notes

For cases on appeal against summary judgment, see 2 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1230–1233.

Cases referred to

Allcard v Skinner (1887) 36 Ch D 145 (refd)
Bank of Credit and Commerce International SA v Abody [1990] 1 QB 923 (refd)
Bank Negara Malaysia v Mohd Ismail & Ors [1992] 1 MLJ 400 (refd)
Bank v Wells 38 LT (refd)
Boughton v Knight (1873) LR 3 PD 64 (refd)
Dane v Mortgage Ins Corp [1894] 1 QB 54 (refd)
Dott v Brown [1936] 1 All ER 545 (refd)
Edwards v Davis 4 TLR 385 (refd)
Gibbons v Wright (1954) 91 CLR 423 (refd)
Hall v Warren (1804) 9 Ves 605 (refd)
Haniff v Dustagir [1948–1949] MLJ Supp 51 (refd)
Hart v O'Connor [1985] 2 All ER 880 (refd)
Imperial Loan Co Ltd v Stone [1892] 1 QB 599 (refd)
Lee Nyan Choi v Voon Noon [1979] 2 MLJ 28 (refd)
Lim Kim Hua v Ho Chui Lan [1995] 3 MLJ 165 (refd)
Lyon v Home (1868) LR 6 Eq 655 (refd)
Malaysian French Bank Ltd v Abdullah bin Mohd Yusof & Ors [1991] 2 MLJ 475 (refd)
Manches v Trimborn (1946) 115 LJ KB 305 (refd)
Miles v Bull [1968] 3 WLR 1090 (refd)
Molton v Camroux (1848) 2 Exch 487 (refd)
Mutual Finance Ltd v John Wetton & Sons Ltd [1937] 2 All ER 657 (refd)
Nassau Steam Press v Tyler 70 LT 376 (refd)
National Westminster Bank v Morgan [1985] 1 All ER 821 (refd)
Ngui Han Moi (f) v Hassan bin Haji Bujang (1946) SCR 21 (refd)
Norton v Relly (1764) 2 Eden 286 (refd)
Nottidge v Prince (1860) 2 Giff 246 (refd)
O'Sullivan v Management Agency & Music Ltd [1985] QB 428 (refd)
Pembangunan Maha Murni Sdn Bhd v Jururus Ladang Sdn Bhd [1986] 2 MLJ 30 (refd)
Pengiran Othman Shah bin Pengiran Mohd Yusoff & Anor v Karambunai Resorts Sdn Bhd (formerly known as Lipkland (Sabah) Sdn Bhd) [1996] 1 MLJ 309 (refd)
Roberts v Plant (1895) 1 QB 597 (refd)
Robinson King & Co v Lynes [1894] 2 QB 577 (refd)
Saw Gaik Beow v Cheong Yew Weng & Ors [1989] 3 MLJ 301 (refd)
Selby v Jackson (1844) 6 Beav 192 (refd)
Tate v Williamson (1866) LR 2 Ch App 55 (refd)
Tara Rajaratnam v Datuk Jagindar Singh & Ors [1983] 2 MLJ 127 (refd)
Teck Guan Trading Sdn Bhd v Hydrotek Engineering (S) Sdn Bhd [1996] 4 MLJ 331 (refd)
Tengku Abdullah ibni Sultan Abu Bakar v Mohd Latiff bin Shah [1996] 2 MLJ 265 (refd)
Wee Koh Eng v Gan Ah Chang (1948) SCR 10 (refd)
York Glass Co Ltd v Judd (1925) 134 LT 36 (refd)

Legislation referred to

Contracts Act [India]
Contracts Act 1950 ss 11, 12, 16
Evidence Act 1950 s 111
Mental Disorders Ordinance 1952 ss 2, 18
Rules of the High Court 1980 O 14 rr 1(1), 4(1)

CT Siew (*Abdullah Ooi & Chan*) for the plaintiff.
Rizwandean Bukhary bin M Borhan (*Hamid Sultan & Rakan-Rakan*) for the defendant.

Abdul Malik Ishak J: By an agreement dated 21 September 1993 between the plaintiff and the defendant, it was agreed that:

(a) the plaintiff would redeem the defendant's land held under HS(D) 21643, PT No 38717, Mukim Kuala Lumpur, daerah Wilayah Persekutuan ('the said land') that was charged by the defendant to Citibank NA, by paying a sum of RM279,938.13 to Citibank NA;

(b) the amount of RM279,938.13 that was paid to Citibank NA by way of a redemption was considered to be a loan emanating from the plaintiff to the defendant;

(c) the defendant would pay an interest at 11%pa on the amount loaned by the plaintiff calculated from the date wherein the said loan was released to Citibank NA by way of a redemption till the date of full payment by the defendant; and

(d) the defendant was required to repay the loan of RM279,938.13 in 60 monthly instalments at RM7,393 per month, inclusive of interest at 11%pa.

For convenience, the agreement dated 21 September 1993 will be referred as the 'said agreement'.

In due course, the plaintiff redeemed the said land with Citibank NA at RM279,938.13. The plaintiff also paid the quit rent and the assessment rates on the said land, together with the relevant insurance premiums. By way of a consideration, the defendant allowed the said land to be used by the plaintiff as security for banking facilities of RM2m granted to the plaintiff by Bank Bumiputra Malaysia Bhd ('BBMB') by way of a third charge. It seemed that the defendant merely paid a sum of RM80,000 to the plaintiff and thereafter the defendant failed to continue paying the monthly instalments. The plaintiff itemized the debt of the defendant as follows:

(i)	60 monthly instalments at the rate of RM7,390 per month :	RM443,580
(ii)	Add: quit rent, assessment rates and insurance premiums on the said land:	RM 4,323.16
		RM 447,903.16

(iii)	Minus payments made on:		
	3 September 1997	RM10,000	
	26 September 1997	RM10,000	
	27 October 1997	RM10,000	
	16 December 1997	RM10,000	
	30 December 1997	RM10,000	
	9 March 1998	RM10,000	
	8 April 1998	RM10,000	
	2 July 1998	RM10,000	RM 80,000
	The total debt payable by the defendant to the plaintiff		RM367,903.16

It seemed that the plaintiff had sent a copy of the statement of account on 31 July 1998 to the defendant. The plaintiff also sent a notice of demand through their solicitors to the defendant demanding the sum of RM367,903.16. That notice of demand was dated 9 September 1998. The defendant refused and persisted in refusing to repay the sum of RM367,903.16 as demanded and, consequently, the plaintiff claimed for that sum together with interest calculated at 11%pa on the sum of RM279,938.13 from 9 September 1998 until the date of the full settlement. The plaintiff also sought for costs and any other relief that the court deemed fit and fair. All these averments can be seen in the writ summons together with the statement of claim as seen in encl 1.

The statement of defence and counterclaim of the defendant revealed the following salient facts. That the defendant was suffering from Parkinson's disease from 1986 and it caused physical as well as mental disabilities as a result of that disease. The plaintiff was said to be fully aware of the defendant's condition at all material times. It was the defendant's stand that the plaintiff took advantage of the defendant's disease and had induced the defendant to execute various agreements and land charges for the benefit of the plaintiff but to the detriment of the defendant. The defendant proceeded to categorize and itemize the particulars of inducement in the following terms:

(a) sometime on or about 21 September 1993, the plaintiff on the pretext of assisting the defendant to redeem the said land induced the defendant to execute the said agreement;

(b) after the defendant had executed the said agreement, the plaintiff proceeded to redeem the said land and without returning the said land to the defendant, the plaintiff proceeded to induce and did induce the defendant to execute a third party charge over the said land in favour

of the plaintiff to enable the latter to obtain a banking facility from BBMB by way of a loan to the tune of RM2m

The defendant further averred that the plaintiff induced the defendant to execute a third party charge over three other properties belonging to the defendant held under the following land titles:

(i) Klang Lot 4859 GM 1400;

(ii) Klang Lot 5760 GM 1401; and

(iii) Klang Lot 5744 EMR 6723.

That third party charge over the three other properties were executed in favour of the plaintiff for the sole purpose of enabling the plaintiff to obtain banking facilities from BBMB to the tune of RM2.3m. For these reasons the defendant averred that the said agreement was null and void and of no effect. In regard to the sum of RM80,000 which the defendant had paid the plaintiff, the defendant averred that this was done as a result of inducement and under the influence of the plaintiff. It was the stand of the defendant that the plaintiff had convinced the defendant to make the payment of RM80,000 under the said agreement. The defendant averred that there was no indebtedness to the plaintiff. On the contrary, so the defendant said, the plaintiff was obliged to discharge the defendant from the liabilities and encumbrances placed on the said land and the other three properties alluded to earlier.

In the counterclaim, the defendant sought a declaration that the said agreement entered between the plaintiff and the defendant be declared null and void and of no effect. The defendant also sought an order that the plaintiff should, within three months from the date of the order of this court, be ordered to release the three other properties in favour of the defendant. Finally, the defendant sought costs and a general prayer for such further or other relief as the court deemed fit.

On these facts, the plaintiff filed an O 14 application against the defendant as seen in encl 5. On 20 July 1999, the senior assistant registrar ('the SAR') heard the application in encl 5 and dismissed it with costs. Aggrieved by the decision of the SAR, the plaintiff filed a notice of appeal to the judge in chambers as reflected in encl 15.

The O 14 application, Parkinson's disease and the mental capacity to contract

Mohammad Azmi SCJ, speaking and delivering the majority judgment of the then Supreme Court in the case of *Bank Negara Malaysia v Mohd Ismail & Ors* [1992] 1 MLJ 400, at p 408 laid down the law in regard to an O 14 application as provided for under the Rules of the High Court 1980 ('the RHC') in these fine words :

> Under an O 14 application, the duty of a judge does not end as soon as a fact is asserted by one party, and denied or disputed by the other in an affidavit. Where such assertion, denial or dispute is equivocal, or lacking in precision or is inconsistent with undisputed contemporary documents or other statements by the same deponent, or is inherently improbable in itself, then the judge has

a duty to reject such assertion or denial, thereby rendering the issue not triable. In our opinion, unless this principle is adhered to, a judge is in no position to exercise his discretion judicially in an O 14 application. Thus, apart from identifying the issues of fact or law, the court must go one step further and determine whether they are triable. This principle is sometimes expressed by the statement that a complete defence need not be shown. The defence set up need only show that there is a triable issue.

Where the issue raised is solely a question of law without reference to any facts or where the facts are clear and undisputed, the court should exercise its duty under O 14. If the legal point is understood and the court is satisfied that it is unarguable, the court is not prevented from granting a summary judgment merely because 'the question of law is at first blush of some complexity therefore takes a little longer to understand' (see *Cow v Casey* [1949] 1 All ER 197 and *European Asian Bank AG v Punjab & Sind Bank* [1983] 2 All ER 508 at p 516).

The defendant placed great emphasis on the fact that he had Parkinson's disease and it was the defendant's stand that that disease affected him both physically and mentally. Was this a triable issue that would bar an O 14 application? My attention was drawn to p 1227 of *Dorland's Illustrated Medical Dictionary* which defines the word 'pa'gitans' to mean:

> 'pa'gitans, parkinsonism of unknown etiology, usually occurring in late life, although a juvenile form has been described. It is a slowly progressive disease characterized by masklike facies, a characteristic tremor of resting muscles, a slowing of voluntary movements, a festinating gait, peculiar posture, and weakness of the muscles. There may be excessive sweating and feelings of heat. Pathologically, there is degeneration within the nuclear masses of the extrapyramidal system and a characteristic loss of melanin-containing cells from the *substantia nigra* and a corresponding reduction in dopamine levels in the *corpus striatum*. Called also *Parkinson's disease* and *shaking palsy*.

and it was part and parcel of the plaintiff's submission that Parkinson's disease was only associated with 'shaking palsy' and not mental retardation, and consequentially, so the submission went, the said agreement between the parties should be construed to be valid and enforceable. On the other end of the fence, an argument was advanced by the defendant to the effect that it was common knowledge that Parkinson's disease is known to be a progressive disease of the nervous system impairing both the physical and mental abilities of the victim. It was pointed out that to argue that the disease merely impaired the victim's physical ability was an exercise in semantics as it was to deny the reality of the disease. The SAR was more practical. It was her view that a neurologist should be the right individual to explain the medical implications of Parkinson's disease and this can only be achieved in the trial proper. Oral evidence must be led and it was certainly a triable issue that warranted a trial. The learned author by the name of H Winter Griffith MD in his book entitled *Complete Guide to Symptoms, Illness & Surgery* at p 463 explained Parkinson's disease in this way :

> Definition:
>
> A disease of the central nervous system in older adults characterized by gradual, progressive muscle rigidity, tremors and clumsiness.

Body Parts Involved:
Area of the brain that regulates movement; muscles.

Sex or Age Most Affected: Adults over 60.

Signs and Symptoms:
tremors, especially when not moving;
general muscle stiffness and slowness;
awkward or shuffling walk;
stooped posture;
loss of facial expression;
voice changes. The voice becomes weak and high pitched;
swallowing difficulty;
intellectual ability is unchanged until advanced stages, when it deteriorates slowly.

Causes:
Usually unknown.Some cases may be caused by medications, such as phenothiazine tranquilizers, brain injury, tumours, post influenza encephalitis, slow virus infection, or carbon monoxide poisoning (possibly).

Risk Increases With: Stress.

How to Prevent? No specific preventive measures.

Appropriate Health Care:
Doctor's treatment.
Psychotherapy or counseling to help relieve depression.
Physical therapy, if muscle rigidity is severe.
Surgery using heat, cold or radiation to destroy
areas of the brain that cause Parkinson's disease (rare).

Diagnostic Measures:
Your own observation of symptoms.
Medical history and physical examination by a doctor.
Laboratory blood studies.
EEG.

Possible Complications:
Depression, sometimes severe.
Pneumonia.
Severe constipation.
Urine retention caused by medication.
Falls and fractures.

Incidentally, by way of a judicial notice, the *Malay Mail* dated 10 May 2000 carried a short story about Michael J Fox, the Hollywood actor, who at 38 years' old is stricken with Parkinson's disease. The write up was worded as follows:

Michael J Fox says he's beginning to feel the effects of Parkinson's disease.

> 'I'm slower than I was. I'm not as dexterous. I'm as strong as I was, but not as agile,' he said in *TV Guide*'s latest issue.'

Still, Fox, 38, who was diagnosed with the debilitating muscle disease seven years ago, said he is optimistic that a cure will be found.

> 'I'm completely confident that in my 50s this will be gone,' he said, adding that he has grown up a lot since he first learned he had the disease. 'Not to be too mawkish about it, but I didn't become a man until I had

this,' he said. 'And it has given me kind of a serenity and a clarity that I wouldn't have had otherwise'.

I have said elsewhere that the scope of judicial notice can never be closed. Its scope and width will extend beyond one's imagination. Syed Agil Barakbah SCJ in *Pembangunan Maha Murni Sdn Bhd v Jururus Ladang Sdn Bhd* [1986] 2 MLJ 30, at pp 31–32 aptly said that:

> The list however is not exhaustive since it is impossible to make a really complete list although a long list of facts which the English Courts take judicial notice of has been prepared. The important point to note is that s 57 (referring to the Evidence Act 1950) does not prohibit the courts from taking judicial notice of other facts not mentioned therein.

Michael J Fox's statements were very illuminating. The defendant must be given a chance to take the stand and state his real feelings, real experiences about that 'debilitating muscle disease'. No one can best describe the experience of being stricken with Parkinson's disease other than the defendant himself. Certainly, the evidence of the defendant must be complemented by the evidence of a neurologist — as suggested by the SAR in her written decision.

The defendant affirmed an affidavit on 16 March 1999 which was filed on 25 March 1999 as seen in encl 12. In that affidavit, the defendant adverted to his Parkinson's disease and enclosed three medical reports marked as exh 'UMI'. The three medical reports were dated 10 December 1985, 14 September 1998 and 15 March 1999. The first medical report dated 10 December 1985 came from Drs Young, Newton dan Rakan-Rakan, and it was worded as follows:

> Drs Young, Newton dan Rakan-Rakan
> Confidential 10 December 1985
>
> The Personnel Officer,
> ICI (Malaysia) Sdn Bhd,
> Wisma Damansara,
> Jalan Semantan,
> PO Box 10284
> 50708 KUALA LUMPUR.
>
> Dear Sir,
>
> R : Encik Udanis Mohd Nor
>
> We examined the abovenamed and we find that Encik Udanis has diabetes for many years and this has not been quite under control in spite of medication.
>
> He has also weakness of his right shoulder girdle and right arm and hand due to a nerve palsy, and this has worsened causing considerable limitation in his ability to write legibly.
>
> He has now developed Parkinson's disease, accompanied by tremors of hands and his right leg and a tendency to freeze up under stressful situations.
>
> Under these conditions, we do not find him fit to continue in service.
>
> Yours faithfully,
>
> Sgd Illegible

Tan Sri Datuk (Dr) Mohd Din B Ahmad
Sgd Illegible
(Dr (Mrs) SD Pakianathan)

Both the second and third medical reports came from the same doctor and it was worded in a similar language in the following terms:

Arsira Sdn Bhd
Specialist Neuro-Medical Clinic

14 September 1998
TO WHOM IT MAY CONCERN

Dear Sir/Madam

Re: UDANIS BIN MOHD NOR IC NO: 3712112

DOB: 4/1/39

The above patient is under my care for:

(1) severe Parkinson's Disease;

(2) fractured right hip

Due to the illness, he need(s) assistance and full time nursing care in his daily chores.

Please extend your kind cooperation to him and his family.

Thank you.
Kindest regards,

Sgd Illegible
ABU SALIM IDRIS, FAMM FRCP

An argument was advanced by the plaintiff challenging the medical reports to the effect that those medical reports did not say nor advert to the mental conditions of the defendant. The medical reports merely referred to the physical problems encountered by the defendant. The medical reports also covered a time span from 1985 to 1999, yet it did not even refer to the mental disabilities of the defendant. Flowing from this, it was argued that physical disability can never be a defence that could be used by the defendant to avoid the said agreement. Briefly put, the defendant was not of unsound mind and it was argued that he had the capacity to enter the said agreement.

As to whether Parkinson's disease had affected the mental capacity of the defendant to enter the said agreement, this can only be decided and adjudicated upon after a full blown trial had been conducted. A mental patient could not, under the law, make a valid contract. Of crucial importance to determine would be whether the defendant at the time of contracting was suffering from such a degree of mental disability that he was so incapacitated and incapable of understanding the nature of the contract (*Boughton v Knight* (1873) LR 3 PD 64 at p 72). Indeed, if the defendant was incapable of understanding the nature of the contract, then the contract was not void but voidable at the option of the defendant provided that the plaintiff knew or ought to have known of the mental disability of the defendant. As alluded to earlier, the defendant averred that the plaintiff was fully aware of the defendant's state of health (*Molton v Camroux* (1848)

2 Exch 487, affirmed on appeal vide (1849) 4 Exch 17; *Imperial Loan Co Ltd v Stone* [1892] 1 QB 599; *York Glass Co Ltd v Jubb* (1925) 134 LT 36; and *Hart v O'Conner* [1985] AC 1000, [1985] 2 All ER 880). The law places a burden on the defendant to show that the plaintiff was fully aware of the defendant's state of health at the time of contracting. On the other end of the scale, if the contract was made by the defendant at the time and during the lucid interval, then that contract would be binding upon the defendant notwithstanding the fact that his disability was known to the plaintiff (*Hall v Warren* (1804) 9 Ves 605 and *Selby v Jackson* (1844) 6 Beav 192). Of crucial importance would be whether the plaintiff knew or ought to have known that the defendant was mentally disordered and had no contractual capacity to enter the said agreement. This can certainly be answered in the course of the trial and not by way of an O 14 application. This brings to the forefront s 11 of the Contracts Act 1950 ('the Act') which enacts as follows:

> Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

Then there is s 12 of the Act which enacts as follows :

> (1) A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.
>
> (2) A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.
>
> (3) A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.
>
> *ILLUSTRATIONS*
>
> (a) A patient in a mental hospital, who is at intervals of sound mind, may contract during those intervals.
>
> (b) A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

Lord Esher MR in *Imperial Loan Co Ltd v Stone* said at p 601 of the report:

> When a person enters into a contract, and afterwards alleges that he was so insane at the time that he did not know what he was doing, and proves the allegation, the contract is as binding on him in every respect, whether it is executory or executed, as if he had been sane when he made it, unless he can prove further that the person with whom he contracted knew him to be so insane as not to be capable of understanding what he was about.

According to the case of *Manches v Trimborn* (1946) 115 LJ KB 305, one must look at the nature of the transaction in order to ascertain whether the party who alleges insanity really understood and was competent to enter the transaction. It would be purely dependent on the facts of each case. No court of law could readily fix a special standard of sanity which is required for all transactions (*Gibbons v Wright* (1954) 91 CLR 423). Now, as to

whether the defendant was indeed insane at the time of contracting — it can only be ascertained and determined by way of a trial and not by way of an O 14 application.

Section 2 of the Mental Disorders Ordinance 1952 defines the phrase 'mentally disordered person' in this way:

> mentally disordered person' in Part 1 of this Ordinance means any person found by due course of law to be of unsound mind and incapable of managing himself or his affairs, and in Parts II or III of this Ordinance means any person of unsound mind and any person being an idiot.

Can the defendant be categorized as a 'mentally disordered person' within the meaning of s 2 of the Mental Disorders Ordinance 1952 so that this court could declare the said agreement to be null and void and of no effect? In my judgment, this court cannot make that kind of declaration by way of an O 14 application. There must be an open court hearing. It is interesting to refer to s 18 of the Mental Disorders Ordinance 1952 which enacts as follows :

> Where a person having contracted to sell or otherwise dispose of his estate or any part thereof afterwards becomes mentally disordered, the court may, if the contract is such as the court thinks ought to be performed, direct the committee of the estate to execute such conveyances and to do such acts in fulfilment of the contract as it shall think proper.

and the extent and purport of this provision can only be appreciated in the course of the trial.

Without a doubt, the issues of Parkinson's disease and the capacity of the defendant to contract were triable issues that needed a full fledged trial. In the words of Lee Hun Hoe CJ (Borneo) in the case of *Lee Nyan Choi v Voon Noon* [1979] 2 MLJ 28 at p 29 :

> As there are triable issues, the proper course would be for the issues to be tried in the usual manner in open court. The power to dismiss an action summarily without permitting a party to proceed to trial is a drastic power and should be exercised with utmost caution. The power of summary procedure should only be resorted to in plain and obvious cases. The present case is not one of those plain and obvious cases. Accordingly, we allowed the appeal and ordered the defence to be restored and gave the defendant unconditional leave to defend. Costs in the cause. Deposit to be refunded to appellant.

Lee Hun Hoe CJ (Borneo) in *Lee Nyan Choi* was dealing with an application to strike out the defence, yet the principles enunciated therein were universal in its application and should be applied vigorously to the facts of the present appeal. When so applied, the appeal in encl 15 should be dismissed with costs.

Undue influence

Using Parkinson's disease as a leverage, the defendant averred that the plaintiff had induced the defendant to enter the said agreement (see para 3 of the statement of defence and counterclaim). In the reply to the statement of defence at para 2(a) thereof, the plaintiff denied para 3 of the statement

of defence and counterclaim and put the defendant to strict proof thereof. In his second affidavit in encl 12 that was affirmed on 16 March 1999, the defendant categorically said that:

> Because of my Parkinson's disease, I have been victimized by the plaintiff and the plaintiff is continuing to victimize me.

and by way of a rebuttal, the plaintiff, through Chang Chee Wei, affirmed a third affidavit on 13 April 1999 as seen in encl 13 and deposed that the Parkinson's disease was irrelevant and was a non-issue.

English law gives the aggrieved party — a victim of undue influence, the right to rescind the contract. In equity, the contract can readily be set aside and the parties restored to their original positions. Being an equitable remedy, it would depend upon a number of factors. Foremost would be the question of time. If the aggrieved party takes no action, or delays abnormally in taking action after the influence ceases, then the right to rescind can be lost. Those who sit on their rights will certainly lose them. A case in point would be the case of *Allcard v Skinner* (1887) 36 Ch D 145. The facts in that case may be stated as follows. In 1868, the plaintiff, Allcard, entered a religious order, the lady superior of which was the defendant by the name of Skinner. Later, in compliance with her vow of poverty, she handed over several large sums of money and some railway stock to be held by Skinner on trust for the general purposes of the order. In 1879, Allcard left the sisterhood and six years later commenced proceedings demanding the return of the property. It was held that at the time that Allcard made the gifts, she was subject to Skinner's influence and on that basis, she would have been entitled, on leaving the order, to recover so much of the property as was then still in Skinner's hands. However, as she had delayed some six years before making the demand, she could not succeed. The court held that by her delay, she had acquiesced in the continuation of the gift. Bowen LJ at p 193 of the report said that:

> ... the time which has elapsed though not a bar in itself ... is a matter from which but one reasonable inference ought to be drawn — the lady considered her position at the time and elected and chose not to disturb the gift.

Apart from ordering rescission, the courts may in appropriate circumstances, make such ancillary orders as are necessary to return the parties to the positions they occupied previously, in so far as that is possible, while still doing justice to all concerned. This power is particularly important in cases where the position of one or the other of the parties has been irretrievably altered so that the principle of restitutio in integrum is totally impossible. A case in point would be that of *O'Sullivan v Management Agency & Music Ltd* [1985] QB 428. In that case, Gilbert O'Sullivan, a composer and performer, had entered into a series of recording and management contracts with the defendant company and had performed under those contracts for a period of approximately six years. At the trial, the contracts were found to have been entered into as a result of undue influence exerted over O'Sullivan by a member of the company's management. O'Sullivan sued to have the contracts set aside and to recover

the benefits the company had obtained under them. It was held that although the parties could not be completely restored to their originally held positions (in that, *restitutio in integrum* was not possible), the court was prepared to order rescission combined with a number of ancillary orders to ensure that justice was done. These included orders that copyright in O'Sullivan's songs be reassigned to him, that the defendant company account to him for all profits it had made and that O'Sullivan allow the company both reasonable remuneration for the work it had done in promoting him and a reasonable amount of profit.

I have alluded to some of the effects of undue influence and all I need say is that the doctrine of undue influence is an equitable doctrine allowing a contract to be set aside where there has been a wrongful exercise of influence by one party over the other. A question may be advanced to the effect that: what sort of influence will the courts view as being wrongful? The answer can be found in the decision of Slade LJ in the case of *Bank of Credit and Commerce International SA v Aboody* [1990] 1 QB 923 where his Lordship categorized undue influence into two classes: actual and presumed. Under the category of actual undue influence it is necessary for the claimant to prove affirmatively that the wrongdoer has exerted undue influence on the complainant to enter into the particular transaction which is impugned. Whereas under the category of presumed undue influence, the complainant only has to show, in the first instance, that there was a relationship of trust and confidence between the complainant and the wrongdoer and by virtue of that relationship it is fair to presume that the wrongdoer abused that relationship in procuring the complainant to enter into the impugned transaction. Thus, in the case of presumed undue influence, there is no necessity to produce evidence that actual undue influence was exerted in relation to the particular transaction impugned. Suffice that once a confidential relationship has been proved, the burden then shifts to the wrongdoer to prove that the complainant entered into the impugned transaction freely and of his own volition.

The principle justifying the court in setting aside a transaction for undue influence can readily be seen and has been established by Lindley LJ in *Allcard v Skinner*. It is not a vague 'public policy' but it involves specifically the victimization of one party by the other. As Lindley LJ said at pp 182–183 of the report:

> The principle must be examined. What then is the principle? Is it that it is right and expedient to save persons from the consequences of their own folly? Or is it that it is right and expedient to save them from being victimized by other people? In my opinion, the doctrine of undue influence is founded upon the second of these two principles. Courts of Equity have never set aside gifts on the ground of the folly, imprudence, or want of foresight on the part of the donors. The courts have always repudiated any such jurisdiction. It would obviously be to encourage folly, recklessness, extravagance and vice if persons could get back property which they foolishly made away with, whether by giving it to charitable institutions or by bestowing it on less worthy objects. On the other hand, to protect people from being forced, tricked or misled in any way by others into parting with their property is one of the most legitimate objects of all laws; and the equitable doctrine of undue influence has grown

A out of and been developed by the necessity of grappling with insidious forms of spiritual tyranny and with the infinite varieties of fraud.

Everything revolves on the Parkinson's disease. It was submitted that the plaintiff knew of the defendant's medical impairment and conveniently took advantage of it and thereby induced the defendant to sign the said agreement under false pretences. This was an issue that can only be determined at the trial by cross-examination of the parties involved. A book entitled *Traumatic Medicine and Surgery for the Attorney* Vol 4, under the editor-in-chief of Paul David Cantor at p 622 defined Parkinson's disease as:

> ... a condition characterized by tremors and rigidity of a classical type, produced by lesions in the basal nuclei of the brain, which may result from a number of causes.

The learned author then proceeded to say at pp 622–623 of the book:

> (1) Trauma in causation and aggravation
>
> It is quite possible that trauma, albeit rarely, can produce parkinsonism. It has been seen in prizefighters in whom repeated head trauma has occurred in the course of their 'sport'. It is, however, a very uncommon cause. The incidence of parkinsonism is not influenced by such conditions as wars, which are usually attended with an increase in head injuries and might be expected to show an increase in those conditions which are caused or precipitated by trauma. Repeated lesser trauma with small areas of hemorrhage in the deeper structures of the brain might be more likely to produce the clinical picture in view of the complicated physiologic mechanism of the disease.
>
> More frequently seen than the appearance with severe head injury is the coincidental appearance with mild injury or the aggravation of symptoms already present following a minimal injury, which does not necessarily have to involve the head. The author has seen the disease start after minor automobile accidents in which there was no evidence of head injury either by history or physical examination. It is not possible that such slight injury could cause the disease but certainly is in some way associated with its appearance.
>
> Electrocution has been described as producing the syndrome of parkinsonism. Subdural hematoma (a collection of blood beneath the dura mater, the outermost and thickest of the membranes surrounding the brain and spinal cord) in the chronic state may also produce such a picture by involvement of basal ganglia by pressure; again this is rare.
>
> (2) Pre-existing disease and trauma
>
> The person with parkinsonism is vulnerable to trauma to a degree which depends on the severity of the symptoms. In the early cases, there may be no increased susceptibility, but it should be remembered that the symptoms are aggravated by anxiety, fatigue and exposure to cold. Patients with more advanced disease are particularly liable to trauma on account of the abnormalities of gait.
>
> Increased susceptibility to trauma may also result from the administration of drugs used in treatment; this is due to the effect on vision, for example there may be blurring of vision, and with atropine (a drug used in the treatment of parkinsonism) visual hallucinations may occur.
>
> Injury to a person with parkinsonism is more likely to have serious consequences than a similar injury in a normal person. This is due to their

susceptibility to infection and, in appropriate cases, to the presence of underlying disease such as arteriosclerosis. Surgical operation, anesthesia or prolonged immobilization, any of which may be the outcome of an accident, are all more serious hazards to the parkinson patient, particularly with reference to pulmonary complications.

(3) Industry

Exposure to the toxic causes of parkinsonism may occur in industry; for example lead (paint and battery manufacturing and in printing), carbon disulfide (rayon, rubber and insecticide manufacture and as a solvent for varnishes), carbon tetrachloride (a cleaning agent) and carbon monoxide (which, among other sources, occurs in the exhaust fumes of gasoline engines).

The presence of parkinsonism will limit the patient's employability, particularly in the advanced stages when he may be completely incapacitated. As the heat regulating mechanism of the body is sometimes disturbed, employment in a hot atmosphere should be forbidden; a cold environment should also be avoided because this aggravates the symptoms. The blurring of vision that occurs as a toxic effect of drug administration is chiefly noticed during close work, and this may temporarily affect the work of employees in certain occupations.

On treatment of the Parkinson's disease, the learned author said at pp 630–632 of the book:

(1) General

In the management of the individual patient, the treatment will follow certain general principles, but the selection of specific drugs will depend much on the patient's reaction and side effects. The general principle of treatment depends on the fact that patients will eventually build up a tolerance to medication and a level will come where the toxic effects of the preparation will far outweigh the beneficial effects. For this reason, when one preparation loses its effectiveness, another should be substituted rather than the dosage maintained indefinitely at a particular level after disturbing toxic signs are noted. The second preparation should be substituted in gradually increasing dosage. When this preparation has reached a toxic level, another preparation may be substituted.

(2) Drugs

The mainstay of treatment has always been the solanaceous (derived from plants of the genus *solanum*) alkaloids such as atropine, stramonium, Rabellon and Scopolamine (hyoscine). The newer group (see Table) of drugs are classified as synthetic parasympatholytics (drugs tending to oppose the action of the nerves of the parasympathetic system. These nerves, in general, stimulate glandular activity). The most important are: Artane, Cogentin, Pagitane, Panparnit and Kemadrin. Antihistamine drugs have a definite place, both as an adjunct to one of the antispasmodics or in cases where agitation and insomnia are present. Cogentin has the advantage of containing the properties of both the antihistaminic and the antispasmodic drugs and consequently is one of the best antiparkinsonism drugs.

(3) Surgical

The role of surgical therapy at present is fairly well established. Chemopallidectomy (an operation in which parts of the lower centres of the

A brain are removed or severed from their nervous connections) is the most reliable technique and has a relatively low mortality rate. It is frequently effective in arresting or reversing the disease. However, it is not without some danger and should be reserved for selected patients. All patients who are still working or who have only mild static or slowly progressive disease should be continued on drug therapy. However, younger individuals with severe disease B are definite candidates for surgery if no response to medical therapy has been obtained.

Finally, on 'prognosis', the learned author explained it in this way (see pp 632–633 of the book) :

C Most cases of drug induced parkinsonism will respond favorably to the withdrawal of the drug and the addition of antiparkinson medication making the prognosis excellent. The majority of cases of parkinsonism, however, will be progressive. The arteriosclerotic and postencephalitic types have a tendency to get worse in a steady downhill fashion and it can be expected that in several years, even with medication, the patient will become incapacitated. The disease itself is usually not directly responsible for death except in those D cases where swallowing difficulties occur but the underlying arteriosclerosis or the susceptibility to infection is usually the cause of fatal outcome. A few patients may have difficulty with body heat regulation and may die as a result of uncontrollable hyperthermia (increased body temperature).

However, not all patients go rapidly downhill. Quite a few will progress slowly or in some the condition may even become static while on medication.

E With the advent of new surgical procedure the prognosis is improved for a small percentage of persons. Despite the good outlook for the future as far as surgical treatment is concerned, the techniques are in the process of being perfected and the criteria for the selection of the patients being established. There is no question that some patients can be completely relieved of their symptoms by the surgical approach, and certainly this is usually not true of F medical treatment; therefore, for the Parkinson patient who may fulfill the criteria of an ideal surgical risk, the outlook would seem better with such treatment.

Can an O 14 application be granted in favour of the plaintiff notwithstanding that the defendant has Parkinson's disease at the time of G signing the said agreement? This must surely be the crucial issue to be adjudicated upon; an issue that has never been raised nor decided upon prior to this. In breaking new ground, I must tread cautiously. The usefulness of an O 14 application can never be doubted. It is a vehicle to dispose of cases which are virtually uncontested. But the plaintiff can only resort to this procedure when the defendant 'has no defence to a claim H included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed (see O 14 r 1(1) of the RHC)'. Scott LJ in *Dott v Brown* [1936] 1 All ER 545 aptly said that the summary process should only be used in proper cases and should not be indiscriminately employed for tactical purposes. If the defendant can set up a bona fide defence, or raise an issue I which ought to be tried, then the O 14 application will not be entertained (*Roberts v Plant* (1895) 1 QB 597 (CA); *Robinson King & Co v Lynes* [1894] 2 QB 577; *Dane v Mortgage Ins Corp* [1894] 1 QB 54 (CA), *Nassau Steam*

Press v Tyler 70 LT 376; and *Edwards v Davis* 4 TLR 385 (CA)). But once 'the judge is satisfied not only that there is no defence but no fairly arguable point to be argued on behalf of the defendant, it is his duty to give judgment to the plaintiff' (per Jessel MR in *Anglo-Italian Bank v Wells* 38 LT at p 201 (CA)). A

Order 14 r 4(1) of the RHC allows a defendant to show cause against an application under r 1 by affidavit or otherwise to the satisfaction of the court. Megarry J, on the other hand, in the case of *Miles v Bull* [1968] 3 WLR 1090 at p 1096 said that where it was apparent that for some other reason there ought to be trial, then the plaintiff will not be accorded the summary procedure. I have to be satisfied that the O 14 application should not be granted to the plaintiff and this was entirely my domain and no one else. The medical condition of the defendant would surely be a good reason not to accede to the plaintiff's O 14 application. The plaintiff must have taken advantage of the defendant's Parkinson's disease in order to unduly influence the defendant to sign the said agreement. Lord Chelmsford LC in *Tate v Williamson* (1866) LR 2 Ch App 55 at p 61 aptly said of the equitable doctrine of undue influence in these words: B C D

> The courts have always been careful not to fetter this useful jurisdiction by defining the exact limits of its exercise.

and, in my judgment, the doctrine of undue influence can be extended to the situation where the defendant was so afflicted with Parkinson's disease that he was unduly influenced to sign the said agreement. The doctrine must be extended to the situation at hand. Of course, the defendant must affirmatively prove, at the trial, that the plaintiff had in fact exerted influence over him and, in consequent thereof, the plaintiff had procured a contract that would otherwise not have been made by the defendant. Examples of contracts tainted with undue influence abound. Suffice for this exercise that I will cite a few of them. Thus, in *Nottidge v Prince* (1860) 2 Giff 246, where the mind of a person of weak intellect was coerced by a claim to possess supernatural power. This would be followed by the case of *Norton v Relly* (1764) 2 Eden 286, where the opposite party was said to have taken advantage of a lady who suffers from religious delusions. Then, this would be followed by the case of *Lyon v Home* (1868) LR 6 Eq 655, where the other party was convinced of the truth of the messages purportedly transmitted from the dead through a spiritualistic medium. Finally, it would be the case of *Mutual Finance Ltd v John Wetton & Sons Ltd* [1937] 2 All ER 657, where the opposite party played on the fears of a son concerning the state of his father's health. E F G

I pause here to take stock of the situation. The local scenario can be seen in the case of *Malaysian French Bank Ltd v Abdullah bin Mohd Yusof & Ors* [1991] 2 MLJ 475, where Zakaria Yatim J (as he then was) said at p 477 of the report: H

> Under s 16 of the Contracts Act 1950, a contract is said to be induced by undue influence where the relations subsisting between the parties to the contract are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the I

other. A person is deemed to be in a position to dominate the will of another where that person holds a real or apparent authority over the other. Where a person, who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears on the face of it to be unconscionable, the burden of proving that the contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

In order to establish undue influence, the third and fourth defendants have to prove that the other party to the contract, that is the plaintiff, was in a position to dominate their will and that the other party had obtained an unfair advantage by using that position. A plea of undue influence can only be raised by a party to the contract and not by a third party. See Pollock & Mulla, *Indian Contract & Specific Relief Acts* (9th Ed) pp 138–139.

Gopal Sri Ram JCA in *Tengku Abdullah ibni Sultan Abu Bakar v Mohd Latiff bin Shah* [1996] 2 MLJ 265 at p 309 blazed a trail when he said:

> That said, we are of the view that our courts, when faced with a case of undue influence in the sphere of the law of contract, must primarily hearken to the words which Parliament has used to introduce the doctrine into our jurisprudence. While we may refer to the decisions of those jurisdictions where the law is akin to our own, we must therefore ultimately have regard to the words of our own statute.
>
> In our judgment, it would be quite wrong, and indeed wholly out of place, to decide a Malaysian case solely by reference to English or other Commonwealth decisions. Indeed, the more recent decisions of the English courts demonstrate that their concept of the doctrine and the relationships to which it may be extended do not accord to the standards of our society.

It would be germane to reproduce s 16 of the Act at this juncture. That section is worded as follows:

> (1) A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.
>
> (2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another —
>
> (a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
>
> (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.
>
> (3) (a) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that the contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.
>
> (b) Nothing in this subsection shall affect s 111 of the Evidence Act 1950 [Act 56].

ILLUSTRATIONS

(a) *A* having advanced money to his son, *B*, during his minority, upon *B*'s coming of age, obtains, by misuse of parental influence, a bond from *B* for a greater amount than the sum due in respect of the advance. *A* employs undue influence.

(b) *A*, a man enfeebled by disease or age, is induced, by *B*'s influence over him as his medical attendant, to agree to pay *B* an unreasonable sum for his professional services. *B* employs undue influence.

(c) *A*, being in debt to *B*, the moneylender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on *B* to prove that the contract was not induced by undue influence.

(d) *A* applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. *A* accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

In *Haniff v Dustagir* [1948–1949] MLJ Supp 51, Callow J categorically stated that a contract which was entered between the parties as a result and flowing from undue influence 'may be set aside on the grounds of public policy'. In *Ngui Han Moi (f) v Hassan bin Haji Bujang* (1946) SCR 21, the Supreme Court presiding in Sarawak held, inter alia, that undue influence had been exercised through the defendant's agent and that the principle of *restitutio in integrum* applied to allow rescission for undue influence. In *Wee Koh Eng v Gan Ah Chang* (1948) SCR 10, the Supreme Court presiding in Sarawak also considered the doctrine of undue influence in the context of the law of contract. Abdul Razak J (as he then was) in *Tara Rajaratnam v Datuk Jagindar Singh & Ors* [1983] 2 MLJ 127 which was affirmed and reported in [1983] 2 MLJ 196, aptly said at p 137 of the report:

> But a person need not be having a fiduciary relationship with another for undue influence to arise if the relation between the parties are such that one of the parties is in a position to dominate the will of the other (s 16(2) of the Contracts Act 1950).

In *Teck Guan Trading Sdn Bhd v Hydrotek Engineering (S) Sdn Bhd* [1996] 4 MLJ 331 at p 340, the court held that where parties dealt with one another 'at arm's length' and had adopted a 'pugilistic stance' against one another, then there would not be any undue influence under s 16 of the Act because domination of the will would be a prerequisite requirement under the provisions of s 16 of the Act.

In *Pengiran Othman Shah bin Pengiran Mohd Yusoff & Anor v Karambunai Resorts Sdn Bhd (formerly known as Lipkland (Sabah) Sdn Bhd)* [1996] 1 MLJ 309, it was held, inter alia, that there had been no undue influence as there had been adequate independent advice. There was 'no question of one party dominating the will of the other'.

In *Lim Kim Hua v Ho Chui Lan* [1995] 3 MLJ 165, the court held that a presumption of undue influence arose under circumstances where the alleged victim was not only illiterate but was also dependent physically and financially on the defendant.

In 1989, Edgar Joseph Jr J (as he then was) — that brilliant and prolific judge whose brilliance still sparkles till today, wrote a perfect judgment in *Saw Gaik Beow v Cheong Yew Weng & Ors* [1989] 3 MLJ 301, where after referring to s 16 of the Act, his Lordship proceeded to apply the cases of *National Westminster Bank v Morgan* [1985] 1 All ER 821 and *Aboody* [1989] 2 WLR 759. At p 307, Edgar Joseph Jr J (as he then was) had this to say:

> In *Poosathurai v Kannappa Chettiar & Ors* (1911) LR 47 IA 1, AIR 1920 PC 65, Lord Shaw ... indicated that there was no difference on the subject of undue influence between the Indian Contracts Act 1872 and the English law. Accordingly, the general principles of equity as illustrated by the English authorities would afford considerable assistance in resolving problems concerning undue influence in our courts.

I might as well point out that our Contracts Act 1950 is identical with the Indian Contracts Act. In fact, our Contracts Acts 1950 finds its genesis from the Indian Contracts Act. At the end of the day, all these authorities serve as useful guidelines. Was the defendant's will dominated by the plaintiff so as to attract the provisions of s 16 of the Act? The answer would certainly be dependent on the evidence that will be adduced in the course of a trial by the defendant. This should be the appropriate course of action, and for the reasons adumbrated above, the O 14 application filed by the plaintiff must surely fail. This meant that the appeal in encl 15 should be dismissed forthwith with costs.

Appeal dismissed.

Reported by Peter Ling